

भारत का राजपत्र

The Gazette of India

प्रांतिका

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

संख्या 7] नई दिल्ली, बृहस्पतिवार, फरवरी 29, 1968/फालगुन 10, 1889

No 7] NEW DELHI, THURSDAY, February 29, 1968/Phalgun 10, 1889

इस भाग में भिन्न पृष्ठ संख्या वी जाती है जिससे कि यह ग्रन्थ संकलन के उप में रखा जा सके।
as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 29th February, 1968:—

Bill No. VII of 1968

A Bill to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Contempt of Courts Act, 1968. Short title
(2) It extends to the whole of India: and extent.

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.

2. In this Act, "High Court" means the High Court for a State, and includes the court of the Judicial Commissioner in a Union territory. Definition.

3. (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written innocent publication and

distribu-
tion of
matter
not
contempt.

or by signs or by visible representations) any matter calculated to interfere with the course of justice in connection with—

(a) any criminal proceeding pending or imminent at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending or, as the case may be, imminent;

(b) any civil proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything contained in any law for the time being in force, a person shall not be guilty of contempt of court on the ground that he has published any such matter as is mentioned in sub-section (1) in connection with any civil proceeding imminent at the time of publication, merely because the proceeding was imminent.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained any such matter as aforesaid or that it was likely to do so:

Provided that this sub-section shall not apply in respect of the distribution of—

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867;

25 of 1867

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

(4) The burden of proving any fact tending to establish a defence afforded by this section to any person in proceedings for contempt of court shall lie upon that person:

Provided that, where in respect of the commission of an offence no arrest has been made, it shall be presumed until the contrary is

proved that a person accused of contempt of court in relation thereto had no reasonable grounds for believing that any proceeding in respect thereof was imminent.

Explanation.—For the purposes of this section, a judicial proceeding—

(a) is said to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

4. Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

Fair and accurate report of judicial proceeding not contempt.

5. A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided if it be for the public good.

Fair criticism of judicial act not contempt.

Explanation.—Whether the comment is or is not for the public good is a question of fact.

6. A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any court subordinate to a High Court to that High Court.

Complaint against presiding officers of subordinate courts when not contempt.

7. (1) A person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera*, except in the following cases, that is to say,—

Publication of information relating to proceedings in chambers

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

or in
camera
not con-
tempt ex-
cept in
certain
cases.

- (b) where the court, on grounds of public policy or in exercise of any power vesting in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;
- (c) where the court sits in chambers or *in camera* for reasons connected with public order or the security of the State, the publication of information relating to those proceedings;
- (d) where the information relates to a secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or *in camera*, unless the court has expressly prohibited the publication thereof in exercise of any power conferred by any enactment for the time being in force.

Other
defences
not
affected.

8. Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in an action for contempt of court has ceased to be available merely by reason of the provisions of this Act.

Act not
to imply
enlarge-
ment of
scope of
contempt.

9. Nothing contained in this Act shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this Act.

Power
of High
Court to
punish
contempts
of sub-
ordinate
courts.

10. Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

45 of 1860.

Power
of High
Court
to try
offences
committed
or offen-
ders found

11. A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the

local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

outside jurisdiction.

12. (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Limit of punishment for contempt of court.

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

13. Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court, unless it is satisfied that the contempt is of such a nature as substantially to interfere with the due course of justice.

Technical
contempts
not
punish-
able.

14. (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court on the same day, or at any time convenient to it, shall—

Procedure
where
contempt
is in the
face of
the
Supreme
Court or
a High
Court.

(a) cause him to be informed orally of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against

him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed by him, with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court.

Cogni-
zance of
criminal
contempt
in other
cases.

15. (1) in the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

- (a) the Advocate-General, or
- (b) any other person, with the consent in writing of the Advocate-General.

(2) In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression “Advocate-General” means.—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State;

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. (1) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise. Procedure after cognizance.

(2) The notice shall be accompanied—

(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(b) in the case of proceedings commenced on a reference by a subordinate Court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908, for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

Hearing
of cases
of
criminal
contempt
to be by
Benches.

Appeals.

17. (1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) This section shall not apply to the Court of a Judicial Commissioner.

18. (1) An appeal shall lie as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged himself of the contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within twenty days;

(b) in the case of an appeal to the Supreme Court, within a period of sixty days,

from the date of the order appealed against.

Punish-
ment how
to be
carried
out in
certain
cases.

19. (1) Notwithstanding anything contained in section 12, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(2) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a corporation, the punishment may be enforced, with the leave of the court, by the

detention in civil prison of the directors or principal officers of the Corporation.

20. The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

Power of
Supreme
Court
and
High
Courts to
make
rules.

32 of 1952

21. The Contempt of Courts Act, 1952, is hereby repealed.

Repeal.

STATEMENT OF OBJECTS AND REASONS

It is generally felt that the existing law relating to contempt of courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinised by a special committee. In pursuance of this, a Committee was set up in 1961 under the Chairmanship of the late Shri H. N. Sanyal, the then Additional Solicitor-General. The Committee made a comprehensive examination of the law and problems relating to contempt of court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the Committee made took due note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of courts and the interests of administration of justice.

2. The recommendations of the Committee have been generally accepted by Government after considering the views expressed on those recommendations by the State Governments, Union territory Administrations, the Supreme Court, the High Courts and the Judicial Commissioners. The Bill seeks to give effect to the accepted recommendations of the Sanyal Committee.

3. The notes on clauses explain in detail the provisions of the Bill.

NEW DELHI;

Y. B. CHAVAN.

The 14th February, 1968.

Notes on clauses

Clause 2.—The definition of "High Court" is modelled on the definition of "High Court" in section 2 of the Contempt of Courts Act, 1952 (hereinafter referred to as the existing Act).

Clause 3.—Contempts in relation to pending proceedings constitute an important category of contempts. This clause provides for certain defences which may be pleaded in proceedings for such contempts and also defines clearly the stage up to which a judicial proceeding may be considered to be pending. Sub-clause (1) provides that want of knowledge of a criminal proceeding whether pending or imminent or of a civil proceeding which is pending would be a complete defence to a person accused of contempt on the ground that he has published any matter calculated to interfere with the course of justice in connection with such proceedings. Sub-clause (2) abolishes the rule of contempt in relation to imminent proceedings so far as civil cases are concerned. Sub-clause (3) provides in effect that a person who has no reasonable ground for believing that the publication distributed by him contained any offending matter shall not be guilty of contempt of court. The defence however is not allowed in the case of distribution of any publication printed or published otherwise than in conformity with the provisions of sections 3 and 5 of the Press and Registration of Books Act, 1867.

Clauses 4, 5 and 6.—These clauses seek to give recognition to some of the existing defences open to an alleged contemner.

Clause 7.—This clause provides that except in the cases specifically mentioned therein a person shall not be guilty of contempt of court for publishing a fair and accurate report of judicial proceedings before any court sitting in chambers or *in camera*.

Clauses 8 and 9.—By way of abundant caution these clauses provide that the proposed legislation shall not be construed as in any way affecting any defence which may be otherwise open to an alleged contemner or the scope of contempt as otherwise understood.

Clause 10.—This clause corresponds to section 3 of the existing Act and deals with the power of High Courts to punish contempt of subordinate courts.

Clause 11.—This clause corresponds to section 5 of the existing Act and it deals with the power of High Courts to try offences committed by offenders from outside its jurisdiction.

Clause 12.—This clause which deals with limits on punishment for contempt of court corresponds to section 4 of the existing Act.

Clause 13.—This clause provides that no court shall punish any one for contempt unless the contempt is of such a nature as substantially to interfere with the due course of justice.

Clause 14.—This clause deals with the procedure which should be followed in the case of a contempt committed in the face of the Supreme Court or a High Court.

Clause 15 and 16.—These clauses provide for the procedure which may be followed in cases of contempt which are not committed in the face of the Supreme Court or a High Court.

Clause 17.—This clause provides that cases of criminal contempt other than those committed in the face of the Supreme Court or a High Court shall be heard and decided by a Bench of not less than two judges. As the rule cannot generally be complied with in the case of courts of Judicial Commissioners, an exception is made in respect of such courts.

Clause 18.—This clause provides for appeal as of right from orders or decisions of the High Court. Where the order or decision is that of a single judge, the appeal is to lie to a Bench of two Judges and where the order or decision is that of a Bench, the appeal is to lie to the Supreme Court. The clause also gives power both to the appellate court and the court from whose judgment or order an appeal is preferred, to stay execution, to release the alleged contemner on bail or to hear the appeal, as the case may be, notwithstanding the fact that the alleged contemner has not purged himself of the contempt.

Clause 19.—This clause *inter alia* provides that in cases of civil contempt, where fine is not an adequate punishment, the punishment of imprisonment to be awarded should consist of imprisonment in civil prison.

Clause 20.—This clause deals with the power of the Supreme Court and of the High Courts to make rules.

Clause 21.—This clause provides for the repeal of the existing Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Supreme Court and High Courts to make rules in respect of matters relating to procedure. The delegation of legislative power is of a normal character.

BILL No. VIII of 1968

A Bill to continue the Armed Forces (Special Powers) Regulation, 1958 for a further period.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

Short title 1. This Act may be called the Armed Forces (Special Powers) Continuance Act, 1968.

Amend- 2. In section 1 of the Armed Forces (Special Powers) Regulation, 1958, in sub-section (4), for the words, figures and letters "the 5th day of April, 1968", the words, figures and letters "the 5th day of April, 1969" shall be substituted.

ment of section 1. Regulation 2 of 1958.

STATEMENT OF OBJECTS AND REASONS

The Armed Forces (Special Powers) Regulation, 1958 (2 of 1958), was promulgated to confer special powers on officers (any commissioned officer, warrant officer or non-commissioned officer not below the rank of Havildar) of the Armed Forces to enable them to aid effectively the civil power in the disturbed areas of Kohima and Mokokchung Districts of the then Naga Hills-Tuensang Area. The Regulation was initially for a duration of one year. It was extended from year to year having regard to the circumstances prevailing in those areas. In 1966, while extending the duration of the Regulation for another year, the Regulation was made applicable to the Tuensang District of the State of Nagaland also, thus covering the entire State of Nagaland. The Regulation will cease to have effect on the 5th April, 1968. It is proposed to provide for the continuance of the Regulation for a further period of one year, i.e. from the 5th April, 1968, to the 4th April, 1969, as the stage for dispensing with it has not yet been reached.

2. The Bill seeks to achieve the above object.

NEW DELHI;

B. R. BHAGAT

The 23rd February, 1968.

B. N. BANERJEE,

Secretary.

